SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
FEB 25 1974
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1973

No. 73-698

FRIENDS OF THE EARTH, WASATCH MOUNTAIN CLUB, INC., and KENNETH G. SLEIGHT,
Petitioners,

v.

GILBERT R. STAMM, Commissioner, Bureau of Reclamation, and ROGERS C. B. MORTON, Secretary of the Interior,
Respondents,

and

STATE OF COLORADO, STATE OF UTAH, COLORADO RIVER WATER CONSERVATION DISTRICT, SOUTHWESTERN WATER CONSERVATION DISTRICT, INTERMOUNTAIN CONSUMER POWER ASSN., NORTHERN DIVISION POWER ASSN., INC., CENTRAL UTAH WATER CONSERVANCY DISTRICT, and COLORADO-UTE ELECTRIC ASSOCIATION.
Intervenors-Respondents.

PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND CERTIFICATE OF COUNSEL PURSUANT TO SUPREME COURT RULE 58

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This petition for rehearing is sought with respect to the order of the Supreme Court entered on January 21, 1974 (42 U.S.L.W. 3435), denying the petition for writ of certiorari to the United States Court of Appeals for the Tenth Circuit in the matter of *Friends of the Earth, et al. v. Gilbert R. Stamm, et al.*, Nos. 73-1223, 73-1278, 73-1279, 73-1280, 73-1281, 73-1282, 73-1283 (consolidated) 485 F.2d 1 (10th Cir. 1973). By telegraphic request dated February 14, 1974, petitioners requested an enlargement of time to file their petition for rehearing, and on February 15, 1974, their request was granted by Mr. Justice White enlarging the time to file until February 25, 1974.

SUPREME COURT RULE INVOLVED

This petition for rehearing is filed pursuant to Supreme Court Rule 58.2.

STATEMENT OF GROUNDS FOR REHEARING OF ORDER DENYING CERTIORARI

Subsequent to the Court's Order denying certiorari, counsel for petitioners have been advised by representatives of Navaho Indians living in the vicinity of Rainbow Bridge National Monument that many Navahos are distraught and angry that the works of white men have invaded the area of the sacred arch Nonnezoshe. Counsel for petitioners have further been advised that the Navahos are also angry that the entire lawsuit concerning Rainbow Bridge has been waged without participation

by Navahos and without any presentation of Navaho interests. Although a motion to intervene was filed in the District Court for the District of Utah on behalf of the Shonto Chapter of the Navaho Tribe and two Navaho medicine men, that motion was resisted by the Federal defendants and was denied by the District Court. No Navaho interests were urged to the Court of Appeals for the Tenth Circuit or to the Supreme Court in the certiorari proceedings.

Petitioners believe that the Navaho grievance is legitimate and substantial and that the grievance merits the consideration of the Court to prevent the Navahos from being placed in a position where they may be barred or estopped from asserting their claims and interests in Rainbow Bridge. The 160 acre monument area is entirely surrounded by the Navaho Reservation. Rainbow Bridge is a sacred and holy place and the site for important religious rites and ceremonies. The great arch clearly has a significance to Navahos that transcends its significance to white men. The religious importance of the arch to the Navahos even suggests arguments not yet made in the case that destruction or defilement of the arch by Federal Government action may violate the First Amendment free exercise clause.

The Shonto Chapter and several individual Navahos will shortly file papers with the Court stating the particulars of their grievances. Petitioners respectfully request the Court to receive such papers and to consider them as part of the showing made in support of this petition for rehearing. Although such a procedure is irregular, the petitioners believe the unique circumstances merit the indulgence of the Court.

CONCLUSION

For the foregoing reasons and for the additional reasons that will be presented in the papers to be filed by the Shonto Chapter and the individual Navahos, the petitioners urge the Court to vacate its previous order denying certiorari and direct all parties to file supplemental briefs addressing the claims and rights of the Navahos. For the same reasons, the petitioners urge the Court to grant the motion of the Shonto Chapter and the individual Navahos to file a brief as *amici curiae*.

Respectfully submitted,

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CERTIFICATE OF COUNSEL PURSUANT TO SUPREME COURT RULE 58

I, James B. Lee, hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and I further certify that the ground for the Petition is restricted to the intervening circumstances of substantial and controlling effect articulated in the Petition.

JAMES B. LEE
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Dated: February 21, 1974.